IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 587 OF 2006
IN
SUIT NO. 514 OF 2006

Mr.Somnath Arora .. Plaintiff.

V/s.

Mrs.Leena Satish Arora .. Defendant.

Mr.R.N.Bhagatjee i/by M/s. S.Ashwinikumar & Co. for the Plaintiff.

Mr.Snehal Shah i/by M/s. Narayanan & Narayanan for the Defendant.

CORAM : S. A. BOBDE, J.

DATED : 12th FEBRUARY, 2007.

P.C.:

. By this notice of motion, the plaintiff prays for an appointment of a receiver and for a direction to the defendant to pay to the plaintiff a sum of Rs.41,250/- per month, being the compensation from February, 2006 till the defendant occupies the suit premises together with aggregate arrears of compensation of Rs.24,88,750/-.

2. The suit is for compensation in respect of the premises which have been handed over to the defendant by

way of conducting licence. According to the plaintiff, he handed over about 2000 square feet suit premises to the defendant on a conducting basis from 01.9.1994 to 31.03.1999 on payment of licence fee in a sum of Rs.13,000/- per month. According to the plaintiff, the defendant has been creating third party rights in the premises. Even otherwise, the plaintiff claims payment of compensation for a period from 28th February, 1999 when the defendant allegedly stopped paying compensation.

3. I have heard both the learned counsel. The defendant claims that her husband has agreed to purchase the part of the premises from the plaintiff under an agreement dated 20th January, 2004. Since then her husband has been in possession of the premises in part performance. Those premises are not the subject matter of this order.

4. As regards the premises in respect of which the plaintiff is claiming compensation from this defendant i.e. Mrs.Leena Arora, this defendant has stated on oath that though the plaintiff had promised to let out to the defendant an area of 2500 square feet, the plaintiff was unable to demarcate and hand over actual vacant and peaceful possession of the entire area and placed the

defendant in vacant possession of 1875 square feet only. The defendant claimed that she has paid compensation for the area which was given to her. In para 6 (k) of the affidavit in reply she has stated that she handed back possession of 625 sq.ft. to the plaintiff in or about December, 1996. Thereafter, vide paragraph 6 (m) she has stated that she handed over possession of the premises admeasuring 1250 square feet to the plaintiff. Therefore, according to her, the plaintiff is not entitled to claim any compensation for the area given to this defendant since it is handed back to him.

5. At this stage, it is not possible to resolve the dispute on facts. However, since there is no rejoinder to the defendant’s statement that she has handed back possession of the premises given to her, the plaintiff is not entilted to any relief at this stage.

6. It must, however, be noted that this is a suit for compensation only. Therefore, it is not a fit case for appointment of a receiver.

7. There is no merit in the prayer for ad-interim relief. Hence, rejected.

(S.A.BOBDE,J.)

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